

DAVID HOWARD,  
DUSTIN EVANS,  
DAMON FLOWERS,

Plaintiffs,

v.

BRANDON MILLER,  
AMANDA COPELAND,  
ARAMARK CORPORATION,

Defendants.

No. 1:20-cv-00352-TWP-MPB

## I. MOTIONS FOR COUNSEL

"Two questions guide [this] court's discretionary decision whether to recruit counsel: (1) has the indigent plaintiff made a reasonable attempt to obtain counsel or been effectively

precluded from doing so, and (2) given the difficulty of the case, does the plaintiff appear competent to litigate it himself?" *Walker*, 900 F.3d at 938 (internal quotations omitted). These questions require an individualized assessment of the plaintiff, the claims, and the stage of litigation. The Seventh Circuit has specifically declined to find a presumptive right to counsel in some categories of cases. *McCaa v Hamilton*, 893 F.3d 1027, 1037 (7th Cir. 2018) (Hamilton, J., concurring); *Walker*, 900 F.3d at 939.

As a threshold matter, litigants must make a reasonable attempt to secure private counsel on their own. *Pruitt*, 503 F.3d 647, 653 (7th Cir. 2007); *see also Thomas v. Anderson*, 912 F.3d 971, 978 (7th Cir. 2019) (because neither of the plaintiff's requests for counsel showed that he tried to obtain counsel on his own or that he was precluded from doing so, the judge's denial of these requests was not an abuse of discretion) (citing *Pruitt*, 503 F.3d at 654–55 (7th Cir. 2007) (en banc); *Romanelli v. Suliene*, 615 F.3d 847, 851–52 (7th Cir. 2010) (explaining that the denial of a motion to recruit counsel was justified by the district court's finding that the plaintiff had not tried to obtain counsel)). The plaintiffs' motions do not allege that they have attempted to recruit counsel on their own.

To decide the second question, the Court considers "'whether the difficulty of the case—factually and legally—exceeds the particular plaintiff's capacity as a layperson to coherently present it to the judge or jury himself.'" *Olson*, 750 F.3d at 712 (quoting *Pruitt*, 503 F.3d at 655). To facilitate the process of evaluating requests for counsel, the Court has prepared a form motion for indigent litigants seeking the appointment of counsel. The form requests the information necessary for the Court to determine the merits of the motion and requires the litigant to acknowledge important conditions of the appointment of counsel. None of the information needed to evaluate the plaintiffs' request is included in their motions.

The plaintiffs' motions for assistance recruiting counsel, dkt. [37] and dkt. [38], are **DENIED WITHOUT PREJUDICE** because they do not indicate that they have made a reasonable effort to recruit counsel on their own, nor do they provide sufficient information to make a determination on the merits or acknowledge the conditions of the appointment of counsel.

## **II. MOTIONS TO CONSOLIDATE**

The plaintiffs' motions for counsel also ask that this case be consolidated with six other cases pending in this Court, arguing that they involve the "exact same issues and exact same defendants." Dkt. 37; dkt. 38. Federal Rule of Civil Procedure 42(a)(2) authorizes courts to consolidate actions that involve "a common question of law or fact." Pursuant Local Rule 42-1, a motion to consolidate must be filed "in the case with the earliest docket number," and a "notice of the motion" must be filed "in all other cases."

Among the cases the plaintiffs seek to consolidate, the case with the earliest docket number is *Callahan v. Douglas, et. al*, 1:19-cv-3908-JMS-DML. There is a pending motion to consolidate in *Callahan* at dkt. 133. Accordingly, the motions to consolidate filed in this case, dkt. [37] and dkt. [38], are **DENIED** as improper in accordance with Local Rule 42-1. For purposes of the motion to consolidate in *Callahan*, the motions filed in this case shall satisfy the notice requirement of Local Rule 42-1(b).

## **III. CONCLUSION**

For the reasons explained above, the motions for assistance recruiting counsel and to consolidate, dkt. [37] and dkt. [38], are **DENIED**. The **clerk is directed** to send each plaintiff a copy of the Court's motion for assistance recruiting counsel form.

IT IS SO ORDERED.

Date: 1/12/2021



Hon. Tanya Walton Pratt, Judge  
United States District Court  
Southern District of Indiana

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